

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3228 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIRBHANU JIVABHAI BALASARA

Versus

STATE OF GUJARAT

Appearance:

NANAVATY ADVOCATES for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/07/96

ORAL JUDGEMENT

This petitioner under Article 226 of the Constitution of India has been filed by the petitioner Virbhanu Jivabhai Balasara challenging the legality and validity of the order of his detention dated 29.2.1996 passed under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act') by the Police Commissioner, Rajkot city (hereinafter referred to as the 'detaining

authority').

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on the 4 criminal cases registered against the detenu. To be more precised, CR No. 123/96m CR No. 58/96 and CR NO. 122/96 are under the provisions of IPC covering Chapters-16 and 17 of the IPC. However, CR No. 25/95 is under section 37(1) and 135 of BP Act which does not fall under chapter 16 and 17 of the IPC. Over and above this material, a further reliance is placed on the statements of three witnesses whose identity is not disclosed invoking the provisions of section 9(2) of the Act, wherein witnesses have stated about the anti social and nefarious activities of the detenu. Considering this material, the detaining authority has recorded a finding that the detenu is a dangerous person within the meaning of section 2(c) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is required to be allowed on the first contention advanced by Mr. Chhaya learned advocate appearing for the petitioner namely that the detenu has been supplied with the documents which are not legible and, therefore, the petitioner was not able to make an effective representation. In the submission of Mr. Chhaya, a right to make an effective representation is infringed guaranteed under Article 22(5) of the Consitution of India and, therefore, the petition is required to be allowed. Having perused the documents at page 79 which is the statement of witness no. 3, there is no manner of doubt that the same is illegible. Mr. UR Bhatt learned AGP appearing for the respondents has frankly conceded the same. Under the circumstances, I hold that in view of the illegible documents supplied to the detenu, the detaining authority has denied the right to make an effective representation guaranteed under Article 22(5) of the Constitution of India to the detenu and, therefore, the continued detention of the detenu is illegal and void.

In the result, this petition is allowed. The impugned order of detention dated 29.2.1996 is quashed and set aside. The detenu- Virbhanu Jivabhai Balasara is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is made

absoulte with no order as to costs.
